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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
**Closed Captioning and Video Description** )  
**of Video Programming** )  
 )  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
 )  
Video Programming Accessibility )

**ORIGINAL**

**MM Docket No. 95-176**

To: The Commission - **Mail Stop 1170**

**COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION**

1. The Community Broadcasters Association ("CBA") hereby files its comments in the above-referenced proceeding. As discussed below, CBA generally supports the efforts of the Commission to ensure that deaf and hard-of-hearing persons have extensive access to closed captioning. However, due to the limited financial resources of many low power television ("LPTV") stations and the high percentage of local programming they broadcast, it is important that any captioning rules balance the need for captioning against the risk of suppressing the creation of local programming. Accordingly, CBA urges the Commission to exempt certain programming from closed captioning requirements, including (1) programs produced by a single LPTV station for its own use or that are broadcast on fewer than 15 stations; (2) programs imported from abroad that are not available in captioned form; (3) programs where the dialogue is in a foreign language, especially one that does not use the Roman alphabet; (4) programs where the dialogue is not reduced to a written script, such as talk shows and variety shows; and

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(5) programs where the audio is primarily music and captions are not included by the national distributor.

## **I. BACKGROUND**

2. CBA is the trade association of the nation's LPTV stations. It conducts various activities on behalf of the LPTV industry and represents the interests of that industry in public policy forums.

3. When Congress directed the Commission to adopt regulations that would ensure that most video programming is fully accessible to deaf and hard-of-hearing persons through closed captions, it recognized that there are practical barriers to universal captioning and directed the Commission to take into account potential economic or other undue burdens that mandatory closed captioning would impose and to determine whether some programs and programmers should be exempt from the closed captioning requirements. 47 U.S.C. at §713(d). Congress directed the Commission to consider the following factors in deciding whether to grant exemptions:

- a. the nature and cost of the closed captions for the programming;
- b. the impact on the operation of the provider or program owner;
- c. the financial resources of the provider or program owner; and
- d. the type of operations of the provider or program owner.<sup>1/</sup>

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<sup>1/</sup> *Id.* at §§ 713(d)(3), 713(e)(1)-(4).

4. In its *Notice of Proposed Rule Making* in this proceeding ("NPRM"),<sup>2/</sup> the Commission tentatively concludes that it should require video program providers, *i.e.*, television broadcasters and multichannel video programming distributors, to bear the ultimate responsibility for compliance with the closed captioning regulations. It proposes a graduated timetable for compliance and proposes to require that a certain percentage of "library programming," programming that was published or exhibited before the effective date of its new rules, be closed captioned within a specific time period.

5. With regard to the statutory directive to exempt some types of programming, the Commission asks whether certain classifications of programming should be exempt due to the "economic burden" imposed on the programming, *i.e.*, "where the economic burden of captioning these programming types outweighs the benefits to be derived from captioning and, in some cases, the complexity of adding the captions."

## **II. DISCUSSION**

6. The LPTV industry represents the most vigorous, fast-growing, and dynamic segment of today's broadcasting industry. LPTV operators have built their own stations often with their own hands, and virtually always with their own money, without bank or Wall Street financing. Rarely do they make any significant profit or throw off any significant cash flow. They usually serve small, local communities or minority or other niche audiences in larger communities. Thus LPTV is an area where the Commission must carefully consider economic hardship.

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<sup>2/</sup> *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Notice of Proposed Rulemaking*, MM Docket No. 95-176, FCC 97-4 (January 17, 1997).

**A. Some LPTV Programming Should Be Exempt  
from Closed Captioning Requirements.**

7. CBA agrees that the availability of closed captioning should be broadened, but it is important that efforts to increase closed captioned programming not result in the curtailment of local and niche LPTV programming, which is so often the hallmark of LPTV stations. As discussed above virtually all LPTV stations have very limited financial resources. It would be economically impossible, even if it were physically possible, for most LPTV station owners to spend the estimated \$500 or more an hour to caption programs produced in house for individual use. Indeed, the entire cost of some LPTV programs is less than \$500. Mandating the captioning of these "home grown" programs would result in the programs never being produced or broadcast. This would force LPTV station owners to rely almost solely on syndicated programming that has already been captioned, depriving LPTV's minority and niche audiences of the specialized programs that LPTV stations are uniquely qualified to provide. Thus, CBA urges that programs produced by a single LPTV station only for that station's use, or for the use of fewer than 15 stations,<sup>3/</sup> be presumed exempt on the basis of economic hardship.<sup>4/</sup>

8. Certain other kinds of LPTV programming should be exempt. As noted above, many LPTV station owners cater to minority communities and broadcast primarily in languages other than English. In order to provide appropriate programming for these audiences, LPTV operators

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<sup>3/</sup> Some LPTV operators cover a market with a group of strategically placed stations. They all broadcast the same programming and should be considered a single entity for purposes of analyzing the economic burden of captioning.

<sup>4/</sup> This exemption should also apply to library programming broadcast by fewer than 15 LPTV stations, as there are no more dollars available to caption LPTV library programming than there are for new programming.

often import from abroad programs that are not available in captioned form from their distributor. These programs should be exempt from closed captioning requirements. It should be noted that qualified captioning personnel are scarce enough as it is, and qualified foreign language captioners are extremely rare. Thus, requiring LPTV station owners to caption these programs would force the owners to abandon the programs because the owners could not afford to caption the programs, even if trained personnel could be found.

9. It is especially important that the Commission exempt programs where the dialogue is in a foreign language that does not use the Roman alphabet. CBA understands that captioning equipment available today is mostly, if not exclusively, limited to the Roman alphabet.

10. LPTV stations often provide their audiences with unique, "home grown" locally produced talk shows and variety shows. Many of these programs are "ad libbed" and are never scripted in writing.<sup>5/</sup> Requiring LPTV stations to purchase "live" captioning services<sup>6/</sup> for these shows at \$500 an hour would simply force stations to abandon this type of programming, because it would become cost prohibitive. Thus, the Commission should exempt from its closed captioning requirements programs where the dialogue is never reduced to a writing of any kind.

11. The Commission should also exempt programs where the audio is primarily music, especially where there are no lyrics, but also where captioning is not undertaken by a national

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<sup>5/</sup> Such programs do not use TelePrompTers or any other similar devices.

<sup>6/</sup> Since the programs are not scripted, there is no way to caption them in advance of broadcast.

distributor. In these instances, captioning has little value and/or is logistically beyond the means of LPTV stations; so captioning should not be mandated.?"

**B. It Is Appropriate To Require Some LPTV Programming To Be Closed Captioned.**

12. As noted, CBA supports the efforts of Congress and the Commission to significantly increase the availability of closed captioning to deaf and hard-of-hearing persons. It should be feasible to mandate captioning on LPTV under certain circumstances. They include:

- a. Captioning could be mandated for all programs that are supplied to 15 or more stations by a syndicator or network, but only where the syndicator or network is responsible for adding captioning information to the film or tape. This category should cover most satellite-distributed programming.
- b. Where a distributor offers both captioned and uncaptioned versions of a program, CBA has no objection to a requirement that all stations, full and low power alike, purchase the captioned version.
- c. Where a station has a TelePrompter that it uses to display scripts to persons appearing on air, it should be feasible to require that the TelePrompter script be fed simultaneously into a caption display machine, provided that VBI insertion equipment is available at a modest cost.

## **CONCLUSION**

14. CBA urges the Commission to strike a balance between the need to increase the availability of closed captioned programming for deaf and hard-of-hearing persons with the limited financial ability of many LPTV stations to provide captioning. These Comments suggest how that balance should be struck, exempting programming from captioning where economically or otherwise infeasible, while requiring captioning for widely distributed programming where there is an economic basis for it.

15. In particular, the following types of programming on LPTV stations should be exempted from mandatory captioning: (1) programs produced by a single LPTV station for its own use or where the program is aired on fewer than 15 stations; (2) programs imported from abroad that are not available in captioned form; (3) programs where the dialogue is in any foreign language, but especially one that does not use the Roman alphabet; (4) programs where the

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8/(...continued)


business, particularly in markets with heavy cable penetration.

dialogue is not reduced to a written script; and (5) programs where the audio is primarily music without lyrics, and where there are lyrics, when the distributor is not required to provide captions.

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